



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of: Kenneth Lerman

Serial No: 09/872,263

Filed: May 31, 2001

For: A SYSTEM AND METHOD FOR THE USE OF
RESET LOGIC IN HIGH AVAILABILITY
SYSTEMS

Attorney Docket No: SYCS-035

Group Art Unit:

Examiner:

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Office of Petitions
Commissioner for Patents
Washington, D.C. 20231

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Date of Deposit September 28, 2001

I hereby certify that this transmittal letter and the papers referred to as being enclosed therein are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Office of Petitions, Commissioner for Patents, Washington, DC 20231.

Signature

Ilidio P. Cardoso

Please Print Name of Person Signing

STATEMENT OF PERTINENT FACTS IN SUPPORT OF
PETITION UNDER 37 C.F.R. § 1.47(b)

Sir:

1. I, Ke Le, am a Technology Officer for Sycamore Networks, Inc., a Massachusetts corporation, having a principal place of business in Chelmsford, Massachusetts.

2. On information and belief, Kenneth Lerman was hired by Sycamore Networks, Inc. on or before August 29, 2000, as a principal engineer.

Mr. Kenneth Lerman's last known residence address is:

55 Main Street,
Newtown, Connecticut 06470
United States of America

In connection with his acceptance of employment, Kenneth Lerman executed an employment agreement (enclosed as Exhibit A) with Sycamore Networks, Inc. on August 29, 2000. In this agreement, Mr. Lerman promised to cooperate with Sycamore Networks, Inc. in securing patent protection for inventions made by him during the term of his employment at Sycamore Networks, Inc., and furthermore assigned and agreed to assign all inventions stemming from his employment with Sycamore Networks, Inc. (See Exhibit A, paragraph 3 (a) of the employment agreement).

3. On April 13, 2001, Mr. Lerman was informed that his employment was being terminated as a result of downsizing at Sycamore Networks, Inc.

4. On June 4, 2001, I sent the Declaration to Mr. Lerman for his signature (See Exhibit B cover letter).

5. On July 25th, Mr. Lerman was contacted by telephone by Attorney John Curran from Sycamore's outside patent counsel on this matter, Lahive & Cockfield, LLP, in reference to an Information Disclosure Statement. Mr. Lerman informed Mr. Curran that he was now represented by counsel regarding the above-mentioned patent application and had not signed the Declaration.

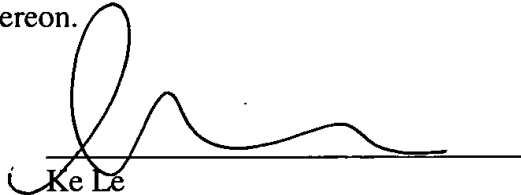
6. Later on July 25, 2001 the Declaration and complete copy of the application for the above-referenced patent application were sent to Mr. Lerman by overnight mail. A Federal Express Tracking No. 601924850398 was assigned to the package which was delivered the next day at 9:45 a.m.(See Exhibit C cover letter and tracking information from overnight package).

7. On August 13, 2001, I received an email from Mr. Lerman indicating that he would not sign the Declaration unless the company paid for private legal representation for Mr. Lerman (See Exhibit D, emails).

8. On August 16, 2001, after I informed him that Sycamore Networks, Inc. would not pay for his private legal counsel, I received another email from Mr. Lerman indicating that he was withdrawing his offer to meet with Sycamore Networks for the purpose of signing the Declaration (See Exhibit D, emails).

9. On September 24, 2001, Attorney Michael Reardon, in-house counsel for Sycamore contacted Mr. Lerman by telephone and again requested that Mr. Lerman sign the Declaration. Mr. Lerman indicated to Mr. Reardon that he would not sign the Declaration.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 101 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Ke Le
Technology Officer
Sycamore Networks, Inc.

Date: 9/26/01

Exhibit A

Kenneth Lerman

**SYCAMORE NETWORKS, INC.
EMPLOYEE AGREEMENT REGARDING
CONFIDENTIALITY, INVENTIONS AND NON-SOLICITATION**

This Agreement is intended to formalize in writing certain understandings and procedures of Sycamore Networks, Inc. and its affiliates, subsidiaries, successors and assigns (Sycamore Networks, Inc. and such affiliates, subsidiaries, successors and assigns collectively and individually are referred to herein as the "Company"). I recognize that the Company is engaged in a continuous program of research, development and production respecting its business, present and future.

In return for my new or continued employment by the Company, I acknowledge and agree that:

1. Previous Work. All previous work, if any, done by me for the Company relating in any way to the conception, design, development, or support of products for the Company is the property of the Company. Nothing in this provision is intended to create any express or implied claim by the Company to any previous work done by me for any person other than the Company. The Company specifically disavows any interest in any work done by me using the proprietary business information of any entity other than the Company.

2. Confidentiality. I will maintain in confidence and will not disclose or use, either during or after the term of my employment without the prior express written consent of the Company, any proprietary or confidential information or know-how belonging to the Company ("Proprietary Information"), whether or not it is in written or permanent form except to the extent required to perform duties on behalf of the Company in my capacity as an employee. Proprietary Information refers to any information not generally known in the relevant trade or industry, which was obtained from the Company, or which was learned, discovered, developed, conceived, originated, or prepared by me in the scope of my employment. Such Proprietary Information includes, but is not limited to software, technical and business information relating to the Company's inventions or products, research and development, production processes, product plans, manufacturing and engineering processes and plans, machines and equipment, finances, organizational charts, employee lists, Company phone directories, customers, customer lists, marketing plans, and production and future business plans and any other information which is identified as, or understood as being, confidential by the Company. Upon termination of my employment or at the request of my supervisor before termination, I will deliver to the Company all written and tangible material in my possession incorporating the Proprietary information belonging to the customers and suppliers of the Company who may have disclosed such information to me as the result of my status as an employee of the Company.

3. Inventions. (a) Disclosure and Assignment of Inventions. I will promptly disclose and describe to the Company, and agree to assign and hereby assign and agree to assign to the Company or its designee, my entire right, title, and interest in all Inventions and practices during the period of my employment with the Company (i) which relate at the time of conception or reduction to the practice of the Invention to the Company's business or actual or demonstrably anticipated research or development, or (ii) which were developed on any amount of the Company's equipment, supplies, facilities or trade secret information, or (iii) which resulted from any work I performed for the Company, whether or not performed during business hours. I hereby waive all claims to moral rights in any Inventions. However, I do not assign or agree to assign any Inventions relating in any way to the Company's business or demonstrably anticipated research and development which were made by me prior to my employment with the Company, which Inventions, if any, are identified on Exhibit A to this Agreement (which attachment

contains no confidential information). I have no rights in any Inventions other than the Inventions specified in Exhibit A. If I do not list any Inventions in Exhibit A, then I acknowledge that none exist.

(b) Definition of Inventions. As used in the Agreement, the term "Inventions" means any new or useful art, discovery, contribution, finding or improvement, whether or not patentable, and all related know-how including but not limited to all designs, developments, trademarks, discoveries, formulas, processes, manufacturing techniques, trade secrets, inventions, improvements, ideas, or copyrightable or patentable works, including all rights to obtain, register, perfect and enforce these proprietary interests.

(c) Nonassignable Inventions. I understand that, to the extent this Agreement shall be construed in accordance with the laws of any state which precludes a requirement in an employee agreement to assign certain classes of Inventions made by an employee, this Agreement shall be interpreted not to apply to the class of Invention which are precluded in such state, but shall otherwise apply to all other classes of Inventions. However, I agree to disclose promptly in writing to the Company all Inventions made or conceived by me during the term of my employment, whether or not I believe such inventions are subject to this Agreement, to permit a determination by the Company as to whether or not the Inventions are subject to this Agreement, to permit a determination by the Company as to whether or not the Inventions should be the property of the Company. The Company will receive any such information in confidence.

(d) Shop Rights. I agree that the Company will be entitled to shop rights providing the Company a non-exclusive, royalty-free, and irrevocable (although nontransferable and non assignable) license to make, use, and sell any invention or other protectable development (whether patentable or not) conceived or made by me which is not within the scope of Section 3 (a) but which was conceived or made on the time of the Company with the use of the facilities or materials of the Company or with the use of Proprietary Information of the Company.

(e) Maintenance of Records. I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings and any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

(f) Patent and Copyright Registrations. I agree to cooperate fully with the Company and to execute and deliver any and all documents and letters necessary for the procurement, maintenance and enforcement of copyrights, patents and other intellectual property rights (both in the United States and foreign countries) relating to the Inventions, including the execution and delivery of any document relating to Patent and Copyright registrations or applications. I will sign all papers, including, without limitation, copyright applications, patent applications, declarations, oaths, formal assignments, assignments of priority rights, and powers of attorney, which the Company may deem necessary or desirable in order to protect its rights and interests in and Invention. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature on such documents, then I irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact to act for and in my behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further the prosecution and issuance of the such applications or registrations with the same legal force and effect as if executed by me.

4. Competitive Employment. During the term of my employment with the Company, I will not engage in any employment, consulting, or other activity in any business competitive with the Company without the Company's prior written consent. In addition, I agree that, for a period of nine months following the termination of my employment with the Company, I will not directly or indirectly, without the prior written consent of the Company, engage in, become financially interested in, be employed by or have any business or professional connection with any business or organization whose products or services are similar in function or capability or otherwise competitive to the products or services being developed, manufactured or sold by the Company. Notwithstanding this paragraph, I understand that I may own the securities of any corporation that is publicly owned and traded but in an amount not to exceed at any one time one percent of the class of stock or securities of such corporation.

5. Acts to Secure Proprietary Rights. I agree to perform, during and after my employment, all acts deemed necessary or desirable by the Company to permit and assist it, at its expense, in obtaining and enforcing the full benefits, enjoyment, rights and title throughout the world in the Inventions and shop rights hereby assigned to the Company as set forth in Paragraphs 1 and 3 above. Such acts may include, but are not limited to, execution of documents and assistance or cooperation in the registration and enforcement of applicable patents and copyrights or other legal proceedings.

6. Non-solicitation. During the term of my employment with the Company and for a period of one (1) year thereafter, I will not directly or indirectly, without the prior written consent of the Company (1) solicit or encourage, or cause others to solicit or encourage, any employees of the Company to terminate their employment with the Company, or (2) directly or indirectly solicit, contact, call upon, communicate with or attempt to communicate with any customer of Company.

7. No Conflicting Obligations. My performance of the Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by me prior to my employment with the Company. I hereby represent that if I obtained any information during my prior employment that my employer indicated was considered confidential and proprietary or that was disclosed to me in a manner that should have made me realize it was so considered, I will not make use of, disclose or induce the Company to use any such confidential and proprietary information during my employment with the Company unless such information: (i) becomes publicly available for reasons other than action on my part; (ii) is independently developed by others at or on behalf of the Company who do not receive access to such information from me; or (iii) is received by the Company from a third party who had lawful possession of such information or ideas and the right to disclose them. I am not a party to any other agreement which will interfere with my full compliance with this Agreement or otherwise restrict my employment with the Company in any way. I will not enter into any agreement, whether written or oral, in conflict with the provisions of this Agreement.

8. Termination of Employment – Delivery of Documents, Data and Proprietary Information upon Termination of Employment. I understand that in the event of the termination (volunteer or otherwise) of my employment with the Company, I agree promptly and without request, to deliver and inform the Company of all documents and data pertaining to my employment and the Company's Proprietary Information, whether prepared by me or otherwise, that has come into my possession. I will not retain any written or other tangible material containing any information concerning or disclosing any of the Company's Proprietary

Information. Upon the cessation of my employment, I agree to sign and date a Sycamore Networks, Inc. Termination Certification in the following form:

This is to certify that I do not have in my possession, nor have I failed to return, any notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, data, documentation, or other materials or property, or reproductions of any aforementioned items belonging to Sycamore Networks, Inc., its affiliates, subsidiaries, successors and assigns (Sycamore Networks, Inc. and such affiliates, subsidiaries, successors and assigns collectively and individually are referred to herein as the "Company").

I further certify that I have complied with all the terms of the Company's Employee Agreement Regarding Confidentiality, Inventions and Non-Solicitation signed by me, including the reporting of any invention, modification, discovery, design, development, improvement process, software program, work of authorship, documentation, formula, data, technique, know-how, secret or intellectual property conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Company's Employee Agreement Regarding Confidentiality, Inventions and Non-Solicitation, I will preserve as confidential all trade secrets or confidential information respecting inventions, products, designs, methods, know-how, techniques, systems processes, software programs, works of authorship, customer lists, projects, plans and proposals, of the Company or any of its employees, clients, consultants or licenses. I further agree that I shall not use or permit to be used any notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, data, documentation or other materials, it being agreed that all of the foregoing is and shall remain the sole and exclusive property of the Company.

I further agree that for one (1) year from this date, (1) I will not hire any employees of the Company and I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment, and (2) I will not directly or indirectly solicit, contact, call upon, communicate with or attempt to communicate with any customer of Company.

9. At-Will Employment. I understand that employment with the Company is at-will. Employment at-will may be terminated at the will of either the employer or the employee, with or without cause, at any time. I understand that the terms and conditions of my employment with the Company may be modified at the sole discretion of the company with or without cause and with or without notice. Other than the President or Chief Financial Officer of the Company, no one has the authority to make any agreement for employment other than for employment at-will or make any agreement limiting the Company's authority to make any such agreement and then only in writing. No implied contract concerning any employment related decision or term or condition of employment can be established by any other statement, conduct, policy or practice. Examples of types of terms or conditions of employment which are within the sole discretion of the Company include but are not limited to the following: promotion; demotion; transfers; hiring decisions; compensation; benefits; qualifications; discipline; layoff or recall; rules; hours and schedules; work assignments; job duties and responsibilities; production standards; subcontracting; cessation or expansion of operations; merger or consolidation of operations; determinations concerning the use of equipment, methods or facilities; or any other terms and conditions that the Company may determine to be necessary for the safe, efficient and economic operation of its business.

10. Notification to New Employer. In the event that I leave the employ of the Company, I hereby grant consent to the notification by the Company to my new employer about my rights and obligations under this Agreement.

11. Third Party Information. I recognize that the Company has received and will receive in the future from third parties their confidential information or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.

12. Survival. This Agreement (a) shall survive the termination of my employment by the Company, (b) does not in any way restrict my right or the right of the Company to terminate my employment at any time, for any reason or no reason and (c) is assignable by the Company (in which case the term "Company" herein will only refer to that portion of the assignee's business which is substantially similar to the business conducted by the Company immediately prior to such an assignment) and (d) is binding upon my heirs and legal representatives.

13. Waiver. The waiver by the Company or a breach of any provision of the Agreement by me will not operate or be construed as a waiver of any other or subsequent breach by me.


14. Severability. If any provisions of this Agreement, or the application thereof, shall for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and application of such provisions of this Agreement shall be interpreted so as to reasonably reflect the intent of the parties. Any void or unenforceable provisions of this Agreement shall be replaced with valid and enforceable provisions that will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

15. Governing Law. This Agreement will be construed in accordance with, and governed by the laws of the Commonwealth of Massachusetts.

16. Entire Agreement. This Agreement becomes effective as of the commencement of my employment with the Company. This Agreement represents my entire understanding with the Company with respect to the subject matter of this Agreement and supersedes all previous understandings, written or oral. Notwithstanding this paragraph, nothing contained herein shall be construed as or constitute a waiver of any claims or remedies that the Company may have under any prior understanding, arrangement or agreement. This Agreement may be amended or modified only with the written consent of both me and the Company. No oral waiver, amendment or modification will be effective under any circumstance whatsoever.

I HAVE FULLY READ AND UNDERSTAND THIS AGREEMENT AND AGREE TO
THIS AGREEMENT AS A CONDITION OF MY EMPLOYMENT.

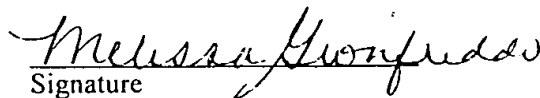
EMPLOYEE:


Signature

KENNETH LERMAN
Printed Name of Employee

AUGUST 29, 2000
Date

WITNESS:


Signature

Melissa Gonfriddo
Printed Name of Witness

8/29/00
Date

EXHIBIT A
PRIOR INVENTION

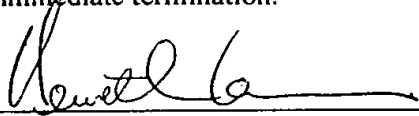
SYCAMORE NETWORKS, INC.
U.S. FOREIGN CORRUPT PRACTICES ACT POLICY

It is the policy of Sycamore Networks, Inc., its affiliates, subsidiaries, successors and assigns (Sycamore Networks, Inc. and such affiliates, subsidiaries, successors and assigns collectively and individually are referred to herein as the "Company") to abide by all the laws of the United States, including the U.S. Foreign Corrupt Practices Act ("FCPA"). In accordance with the FCPA, the Company does not authorize or condone the making of payments prohibited by the FCPA by either its employees or the parties with who it conducts business.

As required by the FCPA, I agree that I will not pay, offer or authorize any bribe or make any other unlawful payment on behalf of the Company. I will not give money or anything else of value in an attempt to unlawfully influence the action of a public official to assist the Company in obtaining or retaining business outside the United States. I further agree that I will not make any payment to any consultant, agent or any other intermediary with the knowledge that all or any part of the payment will be used for a bribe or otherwise to influence government action.

In the event that I receive knowledge of (or obtain a reasonable suspicion of) a request for, or the actual payment of, a bribe, I will immediately disclose that knowledge or suspicion to an officer of the Company.

If I should violate the Company's policy to comply with the FCPA or the specific acknowledgements in this agreement, I acknowledge that the Company will have the right to take disciplinary action against me, up to and including immediate termination.



Employee Signature

KENNETH LERMAN

Printed Name of Employee

August 29, 2000

Date:

Exhibit B

To: Kenneth Lerman
55 Main Street
Newtown, CT 06470

From: Ke Le
Sycamore Networks
10 Elizabeth Driver
Chelmsford, MA 01824
Email: Ke.le@sycamorenet.com

Date: June 4, 2001

Subject: **Signatures for patent filing documents**

Ken,

For your two patent applications:

1. *A system and method for the use of reset logic in high availability systems*
2. *A system and method of maintaining a timed event list*

which was filed with USPTO on 5/31/2001 and 6/1/2001, attached please find the **Assignment and Declaration forms**.

Please sign and witness the forms where marked and return it back to me at your earliest convenience.

Thank you very much.

Sincerely,

Ke,

United States


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Tracking Number 601924850398
Reference Number
Ship Date 07/25/2001
Delivered To Recipient
Delivery Location NEWTOWN CT
Delivery Date/Time 07/26/2001 09:45
Signed For By 2161299
Service Type Priority Letter

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From

To

To

To

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Send Email

To: Kenneth Lerman
55 Main Street
Newtown, CT 06470

From: Ke Le
Sycamore Networks
10 Elizabeth Driver
Chelmsford, MA 01824
Email: Ke.le@sycamorenet.com

Date: Wednesday, July 25, 2001

Subject: **Signatures for patent filing documents**

Ken,

For your two patent applications:

1. *A system and method for the use of reset logic in high availability systems*
2. *A system and method of maintaining a timed event list*

which was filed with USPTO on 5/31/2001 and 6/1/2001, attached please find the **Assignment and Declaration forms** and the complete applications.

I sent you the same forms back to June 4, 2001. Here I sent again. Please sign and witness the forms where marked and return the forms back to me at your earliest convenience.

Thank you very much.

Sincerely,

Ke,

Exhibit D

From: Kenneth Lerman <Kenneth.Lerman@se-ltd.com>
To: "Le, Ke" <Ke.Le@sycamorenet.com>
Date: 8/16/01 2:18PM
Subject: RE: Signatures for patent filing documents

Ke,

I really thought I made a reasonable offer, but since you apparently think otherwise, I withdraw it.

I'd appreciate it if you would send me copies of the regulations and laws referenced by the applications.

I'd really like to see these applications succeed. Perhaps there is another way of resolving this.

Ken

-----Original Message-----

From: Le, Ke [mailto:Ke.Le@sycamorenet.com]
Sent: Tuesday, August 14, 2001 3:48 PM
To: 'Kenneth.Lerman@se-ltd.com'
Cc: Le, Ke
Subject: RE: Signatures for patent filing documents
Importance: High

Hi Ken,

I have received your email dated August 13, 2001. You are correct that any of the firms that you dealt with while employed by Sycamore do not represent any individuals in the relevant transactions, those firms represent the company. This is to advise you that if you feel you need counsel to review certain patent filing documents it must be done at your own expense.

We look forward to receiving the signed patent assignment forms from you.

Thanks.

Ke,

-----Original Message-----

From: Kenneth.Lerman@se-ltd.com [mailto:Kenneth.Lerman@se-ltd.com]
Sent: Monday, August 13, 2001 12:05 PM
To: ke.le@sycamorenet.com
Subject: Signatures for patent filing documents

Ke,

I will be happy to sign the patent assignment forms, but cannot sign

the declarations without an understanding of the relevant referenced law.

The declarations refer to Title 37, Code of Federal Regulations, Title 35, United States Code, and Section 1001 of Title 18 of the United States Code. Since I am not familiar with these laws and regulations, I am uncomfortable signing the declarations without benefit of counsel.

Since I am no longer a Sycamore employee, I don't believe that Lahive & Cockfield automatically represent me. I also don't think it cost effective for me to obtain independent counsel.

I suggest the following:

Lahive and Cockfield should draft a representation agreement so that they represent me as well as Sycamore. I will waive any conflict of interest concerns.

Then I will be happy to meet with the lawyers at your Wallingford location and review any questions I have concerning the applications. Prior to that, I will work my way through the legalese of the patent applications.

At that time, I expect to sign the papers. I expect that Sycamore will pay the legal expenses for Lahive and Cockfield to represent me as well as Sycamore. At any rate, I assume the incremental expense will be minimal.

I'm available to meet any day this week or next. I would prefer to meet at around 10AM.

Regards,

Ken

--

Kenneth Lerman
Systems Essentials Limited
55 Main Street
Newtown, CT 06470

Kenneth.Lerman@se-ltd.com
Fax: (203)426-9138
Voice: (203)426-4430
<http://se-ltd.com/~lerman>

PGP fingerprint = B1 66 29 FB CB 8C 6A 24 E1 DF B4 63 2C D6 5D AD